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Government
Publications

SELECT
COMMITTEE
ON
AUTOMOBILE
INSURANCE

Final Report

MARCH, 1963



LEGISLATIVE ASSEMBLY
OF ONTARIO



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LEGISLATIVE ASSEMBLY OF ONTARIO

FINAL REPORT OF THE SELECT COMMITTEE
APPOINTED ON APRIL 5, 1960
TO EXAMINE INTO AND TO REPORT
ON ALL MATTERS RELATING TO PERSONS
WHO SUFFER FINANCIAL LOSS OR
INJURY AS A RESULT OF MOTOR VEHICLE
ACCIDENTS
MARCH, 1963



THE SELECT COMMITTEE ON AUTOMOBILE INSURANCE

On April 5, 1960, the following resolution was adopted by the Legislative Assembly:

"That a Select Committee of the House be appointed to examine, investigate, enquire into, study and report on all matters relating to persons who suffer financial loss or injury as a result of motor vehicle accidents and, without restricting the generality of the foregoing, including all matters relating to:

1. Financial responsibility of operators and owners of motor vehicles;
2. The payment of claims inclusive of unsatisfied judgments and others, and also including the operation and coverage of the Unsatisfied Judgment Fund;
3. All aspects of compulsory automobile insurance and other related and relevant plans, including the experience of other jurisdictions;
4. The operation of existing legislation and procedures in Ontario;

And to make such recommendations as are deemed advisable with respect thereto;"

The following were appointed members of the Select Committee:

HON. JAMES N. ALLAN, M.P.P., Chairman,
MR. KEITH BROWN, M.P.P.,
MR. A. H. COWLING, M.P.P.,
MR. NORMAN DAVISON, M.P.P.,
MR. J. F. EDWARDS, M.P.P.,
MR. GEORGE GOMME, M.P.P.,
MR. JULES MORIN, M.P.P.,
MR. DONALD H. MORROW, M.P.P.,
HON. J. R. SIMONETT, M.P.P.,
MR. VERNON M. SINGER, Q.C., M.P.P.,
MR. ROSS WHICHER, M.P.P.,
MR. HARRY WORTON, M.P.P.

(Mr. T. D. Thomas, M.P.P., served as a member of the Committee until March, 1961, when he was appointed to another Committee. His place was taken by Mr. Davison.)

Subsequently, Mr. T. M. Eberlee was appointed Secretary of the Committee, and Mr. Morris Earl, Registrar of Motor Vehicles, and Mr. R. H. Humphries, Senior Solicitor in the Department of Transport, served as advisers.

The Committee submitted its first interim report to the Legislative Assembly on March 21, 1961. It reviewed in detail the then existing arrangements in Ontario for the indemnification of victims of motor vehicle accidents, as well as typical examples of alternative plans operating in other jurisdictions in Canada and the United States. As a consequence of the report, the Committee was reconstituted for the year 1961, with the same terms of reference.

A second interim report was presented to the House on December 13, 1961. This document contained five major recommendations, most of which were subsequently implemented by the Legislature. The Committee suggested the replacement of the Unsatisfied Judgment Fund by an easily accessible and expeditious settlement system which would indemnify victims of accidents involving uninsured, hit-and-run and stolen vehicles. This was done, and the Motor Vehicle Accident Claims Fund went into operation on July 1, 1962. The Committee called for the implementation of "measures designed to increase the number of insured vehicles on the roads of Ontario". Among other things in this connection, it recommended that the then fee of \$5 payable by an uninsured owner at the time he registered his motor vehicle be raised to \$20. The Committee also recommended that an owner be required either to maintain insurance on his vehicle or, upon the termination of such insurance, to pay the \$20 fee to the Department of Transport. Both recommendations were implemented by the Government, the first effective January 1, 1962, and the second, July 1, 1962. In operation, they have worked out entirely as anticipated. They have increased the proportion of insured vehicles on the roads of Ontario from approximately 91 per cent to a level of about 98 per cent today. The Committee wishes, in passing, to compliment the Department of Transport on the dispatch with which the various recommendations have been put into effect.

The Committee recommended, as well, that the statutory minimum limits of insurance, and the maximum payments from the Unsatisfied Judgment Fund (now the Motor Vehicle Accident Claims Fund) be increased to \$20,000 for death or injury to one person, \$40,000 for death or injury to two or more persons and \$5,000 for property damage. It was the Committee's view that this would bring the limits closer to the reality of present-day damage awards. The Legislature adopted the spirit of the Committee's recommendation, but provided for a limit of \$35,000 inclusive which went into effect on October 1, 1962. As far as insurance and fund limits are concerned, Ontario people now have considerably more protection than can be found in any other jurisdiction in North America.

The second interim report was signed by all 12 members of the Committee on the understanding that the Legislature would be asked to reconstitute the Committee in order that further consideration might be given to the desirability and feasibility of introducing a compulsory insurance system in the Province of Ontario. Accordingly, the Committee was re-appointed on April 18, 1962.

During May and June of 1962, the members of the Committee examined compulsory insurance plans in operation in New York and North Carolina and held talks with officials in Washington, D.C. The Committee is indebted to the officials of the various government agencies visited in the course of this study for their assistance and for the frankness of the discussions which took place.

Submissions were received by the Committee during the autumn from the All Canada Insurance Federation, a Committee of The Law Society of Upper Canada, Mr. Walter C. Lackey of Ottawa and Mr. Percy McBride of Toronto.

Having given careful consideration to all of the matters falling within its terms of reference, the Committee believes that its work can now be concluded. This report bears the approval of all the members of the Committee. Mr. Davison wishes, however, to have the following noted as his additional comments:

"Although I am not entirely satisfied with this report, I am signing it because it establishes the principle of compensation regardless of fault. I still feel the plan should provide for universal coverage and that it should be administered by the government, in order that premium rates could be established on a non-profit basis."

Accident Insurance Protection

As noted earlier, the provisions enacted during the year 1962, arising out of the second interim report, have increased the number of insured vehicles on the roads of Ontario from about 91 per cent to something approaching 98 per cent. The Unsatisfied Judgment Fund has given place to The Motor Vehicle Accident Claim Fund which is operating expeditiously to indemnify the victims of the remaining small fraction of uninsured, of hit-and-run and of stolen vehicles. The net result of these changes is that in Ontario at the present time more people have access to indemnification at a reasonably adequate level than ever before. Moreover, they are able to obtain settlement of their claims much more quickly than ever before.

The Committee is, of course, concerned that some form of remedy should be available to all persons injured in automobile accidents. This, after all, must be the ultimate objective of any automobile insurance system.

The Committee sees wisdom in the views of certain eminent persons who believe that the traditional fault-liability system sometimes falls short of providing justice to those involved in or affected by automobile accidents. To put the problem in its simplest terms, society can no longer be entirely satisfied with the idea that fault in every accident rests with an individual or individuals and the financial consequences, whatever they may be, should therefore rest with an individual or individuals. In this automobile age, society as a whole is perhaps responsible for traffic accidents and their consequences to a greater extent than we have thus far realized or admitted.

It may also be, as was suggested in the first interim report, that the task of establishing responsibility amid all the complexities of today is, quite frequently, an almost impossible burden on those who adjudicate cases. It is no longer good enough for us to say that all those who are not entitled to indemnification under the traditional fault-liability system—the surviving dependents of the negligent party, the negligent party himself who may be disabled for life, or the small child who dashes in front of an automobile and is permanently crippled—do not deserve a remedy of some kind for damages. The fact of the matter is that they need a remedy.

The Committee is gratified to note that the insurance industry has indicated its willingness to co-operate in the establishment of a new application of accident insurance in this province which would, in the Committee's view, afford, at least in some measure, the remedy which is so obviously required. The insurance industry has, in fact, submitted to the Committee, for its consideration, an outline of a plan and an estimate of its cost.

The plan is as follows (page 187 of the Committee's proceedings for November 8, 1962):

Benefits payable for bodily injury or death,

- (a) to any occupant (driver and passengers) of the described automobile and any pedestrian struck by that automobile;
- (b) to the insured named in the policy and spouse and any dependent relative residing in the same dwelling premises as the named insured when an occupant of or as pedestrian struck by, any other private passenger automobile.

(the reason for the distinction is that in case (a) the owner's policy will be primary, while in case (b) the policy will be excess (subject to highest limit) over another owner's policy.)

Subsection 1—Death Benefits

		Plus for Each
	Principal Sum	Additional Dependent
MARRIED MALE		
18 years to 59 years.....	\$5,000	\$1,000
60 years to 70.....	3,000	1,000
70 years and over.....	2,000	1,000
MARRIED FEMALE		
18 years to 59 years.....	\$2,500	\$1,000
60 years to 69 years.....	1,500	1,000
70 years and over.....	1,000	1,000

(if deceased is a widower or widow, the appropriate principal sum for first dependent plus \$1,000 for each additional dependent. If deceased is an unmarried person 18 years or over with dependent(s) the appropriate principal sum with \$1,000 for each additional dependent.)

CHILD WITH PARENT LIVING

4 years and under.....	\$250
5 to 17 years inclusive.....	500

Subsection 2—Dismemberment and loss of sight

Loss of two hands or feet.....	\$5,000
Loss of entire sight of both eyes.....	5,000
Loss of one hand and one foot.....	5,000
Loss of one arm above elbow.....	3,750
Loss of one leg above knee.....	3,750
Loss of one hand or foot.....	2,500
Loss of entire sight of one eye.....	2,500

Subsection 3—Medical Payments

Indemnity to the extent of \$2,000 for reasonable expenses incurred for necessary medical, surgical, dental, ambulance, hospital (excess of payments under Ontario Hospital Service Commission payments) and professional nursing.

Subsection 4—Funeral Expenses

\$350 for each person.

Subsection 5—Weekly Benefits

\$35 per week payable to an employed person when totally disabled from work subject to a limit of 104 weeks.

(If at the expiry of the said 104 weeks such person establishes a total and permanent disability, \$35 per week will be paid for an additional 104 weeks.)

\$25 per week payable to a housewife when totally disabled from work subject to a limit of 12 weeks.

In both cases there would be no payment for the first seven days' disability.

The insurance industry estimates that if the foregoing coverages are a mandatory part of every insurance policy and if payments made under these coverages are deducted from any additional recovery which might be obtained under the regular third party liability insurance, the cost of the plan will be approximately 12.6 per cent of the premium for the \$35,000 minimum limit bodily injury and property damage coverage provided under the third party liability insurance. In other words, to use the insurance industry's figures, in the Toronto area where the base rate for \$35,000 inclusive B.I./P.D. cover is \$62, the additional premium payable for the foregoing accident insurance would average something like \$7.81. Actually, since the premium for B.I./P.D. cover varies according to the accident record of the particular driver and in some cases goes as low as one-third of the foregoing base rate and in some cases as high as two and one-half times this base rate, the premium cost of the new cover would run between \$3.90 and \$19.50.

At page 187ii of the Committee's proceedings for November 8, 1962, the All Canada Insurance Federation states as follows:

In country areas and small towns the base rate is \$38.00. Again this will vary as indicated above. On the base rate the additional premium required would be about \$4.78. Then some owners would pay only \$2.40 while others might pay as much as \$12.00.

(If the trend in frequency of accidents evident in the first eight months of 1962 continues these premiums may well have to be further increased. The Ontario Department of Transport figures indicate that this frequency is up 8.8% while registrations are up only 2.3%.)

One representative of the insurance industry told the Committee that for 60 per cent of the drivers in Ontario, the cost would be about \$4.00.

The Committee recommends:

1. That coverages along the foregoing lines be made an integral and mandatory part of the standard automobile policy sold in the Province of Ontario. (To make it purely optional would defeat the purpose which the Committee foresees for this coverage and increase its cost very substantially.)
2. That any payment of a benefit under the foregoing coverages be offset against damages recoverable under any third party liability coverage.
3. That the following changes be made in the Motor Vehicle Accident Claims Fund:
 - (a) incorporate into the Fund, benefits and provisions similar to those outlined, to cover situations where vehicles are not insured;
 - (b) provide that the uninsured owner who is at fault, or his survivors, as the case may be, and any gratuitous passengers in his car, can collect the foregoing benefits and that there be no repayment to the Fund for such payments;
 - (c) provide that, where the Fund makes what is in effect a third party liability payment to any person, the amount of any prior payment under the accident benefit coverages is deducted from such third party liability payment;
 - (d) increase the fee of \$20 charged on behalf of the Fund against any uninsured vehicle to a level which will cover the Fund's costs in providing the accident benefits.
4. That a motorist who is driving while unlicensed or intoxicated or in the act of violating the Criminal Code should be denied compensation for injuries sustained in an accident but that his family should receive death benefits if he is killed.

5. That coverages along the foregoing lines should also be made to apply to insurance on trucks except, of course, where the provisions of The Workmen's Compensation Act are applicable.
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It is the Committee's view that the adoption of accident insurance protection, coupled with the new arrangements now in force and which have arisen from the second interim report, will give the people of Ontario a degree of protection against losses caused by automobile accidents greater than that afforded by any plans or systems currently in operation in any other North American jurisdiction.

It would be foolish, of course, to claim that the approach favoured by this Committee is going to be the final answer for all time to this whole question. While no further recommendations are proposed in this particular connection, the Committee does urge those responsible for our automobile insurance arrangements to be constantly vigilant, to be ready to adjust to changing conditions so that, as the occasion indicates, improvements in those arrangements can be made quickly and effectively.

Nation-wide Proof of Insurance

In the second interim report, the Committee made the following recommendation at page 5:

- (d) that proof of insurance be established through the issuance to the owner of a motor vehicle of a form prescribed by the Minister of Transport (similar to the "pink card" form used by other provinces). An owner should be required to produce this form when requested to do so by the police. There should be a penalty for the production of a form which is not valid. If these provisions are adopted, it will be possible to work out a "pink card reciprocity agreement" with the other provinces of Canada, such as Manitoba, that require a person who is involved in an accident in their jurisdictions, whether or not he is at fault, to produce proof of insurance on pain of having his car impounded on the spot. The Committee believes that this form of proof of insurance would be accepted by the "pink card jurisdictions" and that a matter which has caused difficulties for Ontario motorists travelling in other parts of Canada could thereby be cleared up satisfactorily.

The Committee commends the Department of Transport for the efforts which it is making to bring about the adoption of a standard liability insurance certificate which will be accepted as proof of insurance by all Canadian provinces, and reiterates its belief that this should continue to be the subject of strenuous effort.

Payment of Property Damage Claims by the Fund

At page 7 of the second interim report, the Committee recommended that the Motor Vehicle Accident Claims Fund pay property damage claims despite the existence of collision coverage on the claimant's vehicle. Provision for such payment was not made by the Legislature in the amendments to the Fund enacted last year. The Committee believes it only fair that a motorist who is involved in an accident with an uninsured vehicle should not have to cover property damage out of his own collision insurance since this has the effect of increasing his collision premium in future years. The Committee therefore repeats this recommendation and urges the Legislature to implement the measure as soon as possible.

The Control of Insurance Premium Rates

In the second interim report, at page 8, the Committee made the following recommendation:

The Committee feels that the Legislature owes a duty to the public to provide a form of machinery which will guarantee that insurance rates are maintained at a reasonable level. Thus, the Committee recommends that the Superintendent of Insurance be given full power to investigate and to order adjustments where he believes rates to be excessive, inadequate, unfairly discriminatory or otherwise unreasonable, subject to an appeal against his order to the Court of Appeal. It should be noted that All Canada Insurance Federation has already recommended to the Attorney-General of Ontario and the Superintendent of Insurance that the latter be given rate control powers.

The Committee repeats this recommendation at this time because it feels that such powers would provide a necessary protection to the people of Ontario.

The Defence of Inevitable Accident

In its submission to the Committee, the special committee on trial of damage claims, appointed by the Law Society of Upper Canada made the following observations (pages 84-86, Committee proceedings for October 26, 1962):

With so many older models of cars on the highway, the condition of the brakes, mechanical equipment and tires is often not of the best, but nonetheless the condition is often not known to the owner. Suddenly there might be a breakdown and in a few cases the car goes out of control and injures someone. When sued by the innocent sufferer, the owner's insurer raises the defence of unavoidable accident. This defence sometimes succeeds, although more often it is denied. It is submitted the owner should be responsible for all defects in his motor vehicle, and The Highway Traffic Act should be amended accordingly.

RESPONSIBILITY FOR PHYSICAL OR MENTAL CONDITION OF OPERATOR. It has been established in Ontario that if without negligence on his part the operator loses consciousness, or dies, or becomes insane and

causes injury the innocent sufferer cannot recover. This disability in the operator is something that should be assumed by the insurer of the vehicle rather than by the person suffering injury. It could be assumed with probably no increase in the insurance rates.

The Committee feels that justice will be better served if the defence of inevitable accident is eliminated and recommends that appropriate legislative steps be taken to do so. There is, after all, no reason why any party should suffer financial ruin by reason of an unavoidable accident which stems either from a sudden defect of a motor vehicle or the illness or death of the driver of a motor vehicle. The Committee believes that such admittedly rare occurrences should be absorbed in the existing insurance arrangements even if the result is a very minor increase in premium rates or, in the case of an uninsured vehicle, should be borne by the Motor Vehicle Accident Claims Fund.

Highway Safety

It has been represented to the Committee that the availability of dollars and cents for accident victims is only part of the answer to the problem of motor vehicle accidents and that it is of ultimate importance that every effort be made to reduce the toll of accidents through appropriate measures for law enforcement and highway safety.

With these words, the Committee is in complete agreement, and it would not feel it had discharged its responsibility if it did not refer to this matter, even though a strict interpretation would probably rule highway safety outside its terms of reference.

All of which is respectfully submitted,

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James N. Allan

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Jules Morin

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Keith Brown

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Donald H. Morrow

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A. H. Cowling

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J. R. Simonett

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Norman Davison

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Vernon M. Singer

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J. Fred Edwards

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Ross Whicher

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George Gomme

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Harry Worton

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